

CITY OF TIGARD, OREGON

ORDINANCE NO. 02- 10

AN ORDINANCE REPEALING CHAPTER 2.26 ("WITNESSES") OF THE TIGARD MUNICIPAL CODE

WHEREAS, Chapter 2.26 of the Tigard Municipal Code provides for the issuance of subpoenas and specifies the number, form and manner of service, establishes a witness fee, requires testimony of witnesses and permits contempt proceedings for failure to comply with a subpoena; and

WHEREAS, staff review has shown that the same procedures are prescribed in Chapters 33, 44 and 136 of the Oregon Revised Statutes; and

WHEREAS, repeal of this section makes it unnecessary to revise the Code as the legislature amends the Oregon statutes that govern witnesses and subpoenas.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

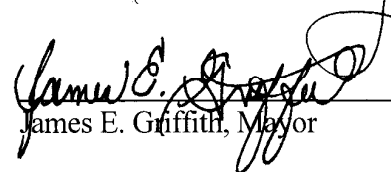
SECTION 1: Chapter 2.26 of the Tigard Municipal Code (Exhibit A) is hereby repealed in its entirety.

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

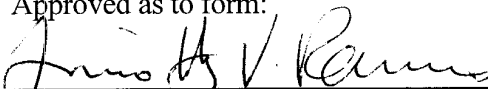
PASSED: By unanimous vote of all Council members present after being read by number and title only, this 12th day of February, 2002.


Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this 12th day of February, 2002.


James E. Griffith, Mayor

Approved as to form:


City Attorney

February 12, 2002
Date

TIGARD MUNICIPAL CODE

EXHIBIT A

Chapter 2.26 WITNESSES*.

Sections:

- 2.26.010 Subpoena--Purpose.**
- 2.26.020 Subpoena--Number.**
- 2.26.030 Subpoena--Form.**
- 2.26.040 Subpoena--By Whom Served.**
- 2.26.050 Subpoena--Manner Of Serving.**
- 2.26.060 Witness Fee--Designated.**
- 2.26.070 Witness Fee--Claiming.**
- 2.26.080 Testimony Of Witness.**
- 2.26.090 Contempt.**
- 2.26.100 Applicable State Statutes Adopted.**

2.26.010 Subpoena--Purpose.

The process by which the attendance of witnesses before the Municipal Court is required, is a subpoena.

The subpoena may be issued:

- (a) By the Municipal Judge;
- (b) By the City Recorder, acting as Clerk of the Municipal Court;
- (c) By the City Attorney;
- (d) By the Attorney of record for the party in whose behalf the witness is required to appear.

The subpoena shall be subscribed by the signature of the Municipal Judge, City Recorder, City Attorney, or by the signature of the attorney of record. (Ord. 85-26 §1(part), 1985).

2.26.020 Subpoena--Number.

Upon application of a defendant, the Municipal Judge or the Clerk of the Municipal Court in which a complaint or citation is pending for trial, shall at the expense of the City issue in

blank subpoenas subscribed by the Judge or Clerk respectively for not to exceed three witnesses within the jurisdiction; provided, however, that any defendant may have subpoenas issued for any number of witnesses at his own expense. (Ord. 85-26 §1(part), 1985).

2.26.030 Subpoena--Form.

(a) The form of subpoena to be used within the City of Tigard shall be substantially that set forth in ORS 139.070, except that the attendance thereby required shall be issued in the name of the City of Tigard and the attendance shall be required in the Municipal Court at a time and place therein to be set forth.

(b) If books, papers or documents are required, a direction to the following effect shall be added to the form as set forth in the ORS. (Ord. 85-26 §1(part), 1985).

2.26.040 Subpoena--By Whom Served.

A subpoena may be served by the defendant, or any other person over eighteen years of age, and shall be served by the chief of police or under his direction within the City of Tigard when delivered to him for service either to a witness on the part of the City or on the part of the defendant. (Ord. 85-26 §1(part), 1985).

2.26.050 Subpoena--Manner Of Serving.

The subpoena shall be prepared in duplicate and shall be served by delivering a copy to the witness personally, and the original shall be returned to the Clerk of the Court with proof of service made in the same manner as in the service of summons. (Ord. 85-26 §1(part), 1985).

2.26.060 Witness Fee--Designated.

The fees of witnesses required to attend the Municipal Court shall be five dollars for each day

TIGARD MUNICIPAL CODE

EXHIBIT A

or any part thereof in attendance before the Municipal Judge.

Every witness who is required to travel in order to execute or perform his duties as a witness, from any point outside the City limits, is entitled to mileage at the rate of eight cents per mile and no more in going to and returning from the place where the service is performed. (Ord. 85-26 §1(part), 1985).

2.26.070 Witness Fee--Claiming.

The Clerk of the Municipal Court, on application of a witness subpoenaed to attend Municipal Court, shall enter in the fee book under the title of the action in which the witness was subpoenaed or recognized, the number of days attendance and the number of miles necessarily traveled in consequence of the subpoena. The Clerk shall swear the witness to the statement contained in that entry. The fees and mileage of a witness in the Municipal Court shall be claimed within fifteen days after the appearance of the witness pursuant to the subpoena, and not afterwards. (Ord. 85-26 §1(part), 1985).

2.26.080 Testimony Of Witness.

Any person present in Court or before the Municipal Judge may be required to testify in the same manner as if he were in attendance before the Court upon a subpoena. (Ord. 85-26 §1(part), 1985).

2.26.090 Contempt.

Disobedience to a subpoena or refusal to be sworn or answer as a witness when required, may be punished as a contempt by the Court before whom the witness is required to attend. (Ord. 85-26 §1(part), 1985).

2.26.100 Applicable State Statutes Adopted.

ORS Sections 44.310, 44.320, 44.330, 44.340, 44.350, 44.360 and 44.370 with respect to oaths and affirmations of witnesses, by virtue of authority of ORS 221.330, are adopted by this reference, section by section, paragraph by paragraph, word by word, in the entirety in all respects to the same legal force and effect as if set forth herein in full. (Ord. 85-26 §1(part), 1985).

* For statutory provisions regarding witnesses, see ORS 136.555-136.695; for Charter provisions allowing the municipality judge to compel witnesses to appear in Court, see Chapter V §21 of the Charter of the City of Tigard.■